IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1730 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURAJBHAN HARISHANKER AGRAWAL

Versus

YASHWANTLAL GIRDHARLAL SHROFF

Appearance:

MR RR MARSHALL for Petitioner

MR RS SANJANWALA for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/11/2002

ORAL JUDGEMENT

1. This is a revision application under section 115 of the Code of Civil Procedure (1908) (as amended in 1976).

2. The respondent-plaintiff being the landlord of

the petitioner-defendant had filed Regular Civil Suit No.151/1988 before the Court of Civil Judge (Junior Division) for arrears of rent, mesne profit and possession of the rented premises. In the said suit, the respondent-plaintiff-landlord gave an application Exh.45, wherein he prayed that the defendant-tenant is not depositing the necessary rent in the court and seeks to defend the suit on frivolous grounds. The plaintiff-landlord therefore specifically prayed that (i) the defendant-tenant be directed to deposit the arrears of rent in the court as may be directed by the court, and (ii) if the defendant-tenant fails to make the said deposit as directed by the court, the court may direct that the defendant's defence shall be struck off. The trial court by its impugned order passed below Exh.45 dated 24th January 1994 directed, specifically referring to the said order as an interim order dealing with interim rent, that the defendant-tenant is directed to deposit within 15 days the arrears of rent, by way of interim rent at the rate of Rs.76.05ps per month, and to continue to deposit the said amount regularly until the pending standard rent application is decided. It is specifically required to be noted here, in the context of the impugned order that the trial court did not direct that in case the tenant failed to make the said deposit, his defence to the suit shall be struck off. However, it is this order which has been made the subject matter of the present revision application by the defendant-tenant.

3. It is both relevant and pertinent to note that the Code of Civil procedure (1908), has been amended by the Code of Civil Procedure (Amendment) Act, 1999, which was published in the Gazette of India dated 30th December 1999. However, by virtue of the Notification issued under section 1, subsection (2) of the said Amendment Act, the amendment came into force from 1st July 2002.

4. For the present purposes, it requires to be noted that section 12 of the Amendment Act amends and modifies section 115 of the principal Act, whereby (inter alia) a new proviso has been substituted as under:

> "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

It therefore becomes obvious that the High Court while

exercising its powers of revision under section 115 of the Code (as amended), would be justified in entertaining such a revision application, and/or interfering with the impugned order, only where the impugned order, if it had been made in favour of the applicant in revision, would have finally disposed of the suit or other proceedings. In other words, a revision under section 115, after the amendment, would be entertainable only if the applicant in revision can successfully contend that if the trial court had granted the application made by the applicant, it would have disposed of the suit or other proceedings (as the case may be).

5. It is also relevant to note that the aforesaid Amending Act of 1999, vide section 32 thereof, deals with repeal and savings.

5.1 By virtue of section 32, subsection (2), clause (i), the amendment introduced by section 12 of the Amending Act shall not affect any proceeding for revision which had been finally disposed of. Obviously, therefore, the only proceeding which the amendment does not and cannot affect is a revision which has been finally disposed of. In other words, any revision application which is pending admission, or pending final hearing after admission, would be governed by the amendment introduced by section 12 of the Amending Act.

6. On the facts and circumstances of the case, it cannot be said that the application made by the present applicant in revision, had it been granted by the trial court, would have disposed of the suit. Under the circumstances, it must be found that this court cannot "vary or reverse any order made, or any order deciding an issue....".

7. It necessarily follows that the present revision is therefore not maintainable and/or incompetent.

8. The aforesaid view has also been expressed by this Court in the case of Parakramsinh Vikramsinh Jadeja Vs. Yogi Corporation, reported at 2002(3) GLR page 2040.

9. This revision application is, therefore, dismissed. Rule is discharged with no order as to costs. Interim reliefs stands vacated.

10. It is clarified that since the impugned order does not either specifically or impliedly deal with the landlord's prayer for striking off the defence of the tenant in default of the deposit directed by the court

under the impugned order, it shall be open to the plaintiff-landlord to make an appropriate application to the trial court for the aforesaid purpose. It is further clarified that in case the petitioner-tenant makes an application before the trial court for extension of time to make necessary deposit as directed under the impugned order, the trial court shall deal with the same sympathetically on merits and in accordance with law and pass appropriate orders thereon. This direction is not to be construed to mean that the trial court is obliged to grant time.

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